

Special Rules and Waivers of House Rules

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Contents

The Nature of Waivers.....	1
Categories of Waivers.....	1
Timing	1
Contents	1
Amendments	2

Contacts

Author Information.....	2
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The Functions of Special Rules

A special rule is a House resolution intended to regulate floor consideration of a specific legislative measure named in the resolution. The requirements prescribed by a special rule can supersede the standing rules of the House (as well as rulemaking provisions in statutes such as the Congressional Budget Act), but only in application to the measure named. Special rules have two key functions: (1) to enable the House to consider a specified measure, and (2) to establish specified terms for considering it. Waivers are one aspect of this second function. For more information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.

The Nature of Waivers

The standing rules of the House impose various limitations on the consideration of legislation. It is not always in the interest of the House to observe these limitations, however. Therefore, special rules may sometimes include exemptions from one or more provisions of the standing rules, which appear in the form of waivers of those provisions.

A waiver protects a bill, specified provision(s) in a bill, an amendment, or a motion from a point of order that could be raised against it. Waivers may be granted for one or more amendments even if they are not granted for the underlying bill. Special rules may also include a “blanket waiver,” that is, a provision that would protect a given matter from any point of order. Blanket waivers have been common in recent Congresses. For example, in the 109th Congress, the Rules Committee reported 187 special rules providing waivers of points of order. Of these, 146 provided a waiver of all rules of the House.¹

Categories of Waivers

House rules that are frequently waived fall into three general categories:

Timing

Several provisions in House rules place limitations on the timing of floor consideration of a measure. For example, Rule XIII, clause 4(a)(1) requires that most measures may not be considered until the third calendar day on which the committee report is available. Also, Section 303(a) of the Congressional Budget Act of 1974 prohibits the consideration of most budgetary legislation until the House and Senate have agreed to a budget resolution for that fiscal year. Similarly, Section 302(c) of the Budget Act requires that the Appropriations Committee must make its 302(b) suballocations before the House may consider appropriations bills.

Contents

House rules place a variety of limitations on the contents of particular measures. Among these, Rule XXI, clause 2 prohibits both unauthorized appropriations and legislation in appropriations bills, while clause 4 prohibits appropriations in measures not reported by the Appropriations Committee, and clause 2(a)(2) prohibits provisions reappropriating unexpended balances. Rule XXI, clause 5(a) prohibits a tax or tariff in measures not reported by the Ways and Means

¹ U.S. Congress, House Committee on Rules, *Survey of Activities*, 109th Cong., 2nd sess., H.Rept. 109-743 (Washington: GPO, 2007), p. 70.

Committee, and Section 306 of the Budget Act similarly prohibits consideration of matters in the jurisdiction of the Budget Committee in measures not reported by the Budget Committee. The Budget Act also places additional restrictions on the contents of legislation, including Section 310(g), which prohibits recommendations pertaining to Social Security in reconciliation legislation, and Section 425(a)(2), which prohibits consideration of legislation containing unfunded mandates to state or local governments. The Budget Act also limits the level of funding that may be included in a measure (e.g., Sections 302(f), 311(a), 401(a)).

Amendments

In addition to the rules applying to the contents of legislation generally, several House rules restrict the contents only of amendments. The most salient of these is Rule XVI, clause 7, which requires that all amendments must be germane to the question they are intended to amend. Another example is Section 310(d) of the Budget Act, which requires that amendments to reconciliation bills may not increase the deficit.

House rules impose only two limitations on proposed waivers in special rules:

- Rule XIII, clause 6(c)(2) prohibits special rules that waive the right of the minority leader (or a designee) to offer a motion to recommit a measure with or without instructions to report back with an amendment otherwise in order as provided in Rule XIX, clause 2(b); and
- Section 426 of the Budget Act prohibits consideration of special rules that would waive the application of the point of order against unfunded mandates provided under Section 425 of the act.

In addition, Rule XIII, clause 6(c)(1) of House rules prohibits special rules that would set aside the calendar Wednesday procedure (Rule XV, clause 7) by a vote of less than two-thirds of members present.

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